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**TESTIMONY**

*CV 15-92-GF-Bmm*

**OF**

**NITSIITIPIKS, REAL PEOPLE OF THE  
BLACKFEET NATION**

**REGARDING BLACKFEET/STATE  
WATER COMPACT AND BIRCH CREEK  
AGREEMENT**

**BEFORE THE UNITED STATES SENATE  
SELECT COMMITTEE  
ON INDIAN AFFAIRS  
MAY 4, 2010**

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*No Indian Nation in history began its relationship with the United States with a stated intention of being stripped naked of its resources and laden in chains with the present curtails of their freedoms imposed by the United States through the various legal fictions and theorems as constituted in plenary powers and the dodge of judicial responsibility through the political question doctrine. (1)*

This is to bring to the attention of the full Select Committee that we have been protesting said State Water Compact to Montana Senators Baucus and Tester. Beginning in 2006, with Senators Baucus and Burns Hearings on their Bill to Study the Rehabilitation of the St. Mary and Milk River Reclamation Project, we have been registering our Protests. In that Study Bill as enacted, Senator Baucus attempts to destroy our Prior and Paramount Rights to the level of our having to compete with other municipalities for the development of Hydro generation on that system.

The State Water Compact is the end result of sustained and concerted efforts by the United States Trustee to destroy the Blackfeet's Invaluable rights to water title to which resides in the Tribe and to destroy its inherent powers of self government to control and have authority over resources and our Homeland, the one and a half million acres known as the Blackfeet Reservation. To that end, no money was ever expended for development or administration, instead a lawyer, Jeanne Whiting, was hired by the Tribal Council and paid for by the Trustee to negotiate Blackfeet's water rights; she never prepared us for litigation. On March 24, 2010, she was hired to represent the Blackfeet Constitutional Reform Committee in its efforts to dismantle the present Blackfeet Constitution and Corporate Charter our only protection. Two days later, March 26<sup>th</sup>, Senators Baucus and Tester were given the go ahead to introduce the State Water Compact into Congress.

All things considered, the introduction of the Montana Water Compact into Congress at this time is an action that can be charted time wise leading up to the ultimate genocide of the Blackfeet Members and involves a conspiracy at the highest levels of government. Our people have neither voted to approve said Compact nor have we approved transmission of said document to the State or the United States for Ratification. Our right to full and prior knowledge and our right to vote supersede any other Entities' actions. When it comes to Treaties/Agreements/Compacts, we as a Nation of individual

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members/people, have first right to know and give our consent to; when it comes to our sovereignty and jurisdiction and control of our territory, that principle stands. Further, our Constitution and By-Laws and Corporate Charter does not provide for representation by Tribal Council to dispose of or compromise or sell our water rights, our lands, our water power sites and other natural resources. And other assets of \$10,000.00 or more must be voted on by the Membership. Destroying our Constitution and By-Laws and Corporate Charter does not pave the way for the taking of our Treaty Reserved, aboriginal, Time Immemorial, Prior and Paramount Water Rights; it only serves to confirm the Conspiracy which methods are being utilized for ultimate destruction of our Homeland, our invaluable rights which stave off complete annihilation of the Blackfeet People. We are the poorest of the poor but still have inalienable rights to exist as separate Nations with our rights intact. History shows that when it comes to Indians' rights we must move over for the Whites and in this case, if we move over, it means death to us.

Two years ago, the Blackfeet membership voted in a Referendum, to make changes to our Constitution and By-Laws according to certain methods and utilizing specific Studies and was to be accomplished within one year, at which time we would vote for those changes in a Secretarial Election. However, the deadline came and went and nullified the Referendum. But the Constitutional Reform Committee created pursuant to that vote, became very active in August, 2009, and began engaging in illegal actions with regard to their methods. (Nonmembers, Blackfoot Project) the Blackfeet people protested the above but the process continued. The basis of our concerns turned out to be correct that they would be getting rid of the Constitution and Corporate Charter in their zeal to make a completely new Constitution. This we can prove is all tied in with the Blackfeet members' protest against the State Water Compact wherein we demanded the vote pursuant to our organic documents at which time Councilmen Gervais and Sharp said that the section in question was outdated and needed to be changed. So that by December 2007 and January 2008 General Councils, they reiterated their statements so that by June, 2008, a circumscribed question of changing the Constitution went before the People in a Referendum vote. Last year's Montana State Legislature ratified said Compact; we had emailed every Legislator and informed them of the illegality of the Compact but it was introduced by a marginal member of the Tribe, State Representative Shannon Augare.

In the March 11<sup>,2010</sup> General Council, the People read a Proclamation to the Tribal Council regarding the People's opposition on the Constitutional Reform and the reasons why. At the same time, the deadline problem became a minor issue and a Resolution was passed whereby the People would provide the wording for a new Referendum. Immediately, the deadline problem became paramount issue as it involved the legality of the Constitutional Reform Committee and its recent past and present activities and conduct. We asked the Tribal Council for \$9,000.00 for an attorney; they refused us and hired the water Attorney for \$30,000.00, to protect the dismantling of our protections.

*Not surprisingly, those water users who have benefited from federal water projects are*

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*now those who seek additional allocations and there is only one source for additional water; from Indian Tribes. They have banded themselves together into the Western Regional Council and have sought and apparently obtained, the alliance of some federal agency head to devise ways to get that Indian Water. (June 19, 1984 Testimony of Elmer Savilla, Director of National Tribal Chairman's Association before U.S. Subcommittee on Public Lands and Natural Resources. He said that to make better use of their lands, Indian Tribes need water; to attain economic self-sufficiency, Indian Tribes need water; their use of water in sufficient quantity is tied to their very survival; there are those non-Indian who vehemently resent any Indian ownership of legal water rights. The root of the problem, he said, stems from the fact that the U.S. Trustee failed to advance, protect, and develop those rights. His Testimony includes the fact that the Congressional ratification, legislative settlement of water compacts starts with the unanimous conclusion that any existing law which supports Indian water rights is downright detrimental and downright inconvenient to non-Indians and MUST BE CHANGED.*

Anyone who has read said Compact, depending on your position, would either cheer for the Whites and the Blackfeet's Lawyer who devised it or cry for the Blackfeet; the Blackfeet have no water other than what is left to run 100 miles downstream. We are not allowed to use any water here and cannot get more water if we run low (on what?). The Badger and Two Medicine must be stored for municipal and for the off Reservation Conrad Canal Company in a lake which requires major building to provide storage for Birch Creek, and the Blackfeet promise not to use any of that water for 15-25 years. Birch Creek is a Decreed Stream, Conrad Investment (1908), a Winters Decision. The St. Mary and Milk River Federal Reclamation Project is operated by the Bureau of Reclamation under the guise of the Boundary Waters Treaty (1909) for the purpose of transporting Blackfeet Water 200 Miles to downstream White water users. Prior to and unconnected to any water compact or water settlement act, 100 years of theft of our water is involved for which we are due just compensation and including just compensation for the illegal structures and components on our Reservation including the storage facility, Lake Sherburne Dam. The amounts of money mentioned in the Great Falls Tribune do not involve just compensation; it is to repair the Blackfeet Irrigation system which has been administered by the Bureau of Indian Affairs for the Benefit of White farmers. The system was built with Blackfeet money. Now that it has fallen into disrepair, money from the so called Blackfeet Water Settlement Act will pay for its rehabilitation. Some of said money will go toward building the Storage Facility on Four Horns Lake for Conrad Canal Company and users, Whites. Other money expenditures involving infrastructures will require approval of the State based on feasibility. Where does the Blackfeet benefit?

There are minor claims for other streams on the Reservation so it makes no sense to strip the Blackfeet of it invaluable rights to Water and the attendant economic benefits which should have accrued if the Trustee United States had developed our Rights as they did for the White downstream water users and which they are still doing in this Compact.



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Until the State of Montana held Hearings on the Blackfeet Reservation, (required according to their law but not legally on our Reservation) the Blackfeet People had been kept in the dark with regard to what was in the Compact and attendant Birch Creek Agreement and yet they came out solidly against it. We found out why we were kept in the dark; in a 2006 taped interview with KSEN Shelby Radio Station, Don Wilson, Jeanne Whiting's new water specialist, said that the *Tribal Council was sworn to secrecy by the United States Government in the initial process because of it being potentially a court case and those issues could not be open to the public.* It would be understandable if Jeanne Whiting had ever begun to prepare us for litigation but she did not, otherwise we would have evidence of it. There is none. However, the Tribal Council continued to keep their silence and abused the People when they tried to voice their objections. They continue to violate the People's right to be heard, a civil liberty built into our Constitution, and our traditional rights.

Our last protest to Senator Max Baucus and Senator Jon Tester was in response to the outgoing Tribal Council members' action, July 2008, to prepare the Compact for State and Congressional Ratifications and to send it to the appropriate Entities. We submitted the following and submit it here in its entirety as it gives some history of what had happened up to October 6, 2008:

*This is to most respectfully advise you that what you have been asked to do by the Blackfeet Tribal Business Council is illegal with regard to getting the Congress to ratify the proposed Negotiated State-Blackfeet Water Compact and Birch Creek Agreement; they are illegal documents as they have not been approved or voted on by the Blackfeet people. The Blackfeet Tribal Business Council, while a representative government, does not have the power or authority to extinguish title to our rights or to give Congress the right to extinguish that title nor does said Council have the power or authority to alter, amend, or abrogate our Treaty rights. Public Hearings held within the past couple years disclosed Blackfeet's total opposition to the Proposed Settlement of our water rights. We will attach their Testimony submitted to the Blackfeet Tribal Business Council and the State of Montana all of which were ignored.*

*For Congress to pursue the ratification of the illegal, immoral, inhumane proposed State-Tribal Negotiated Settlement is a Travesty and will destroy our ability to govern and our ability to survive. However, it will effectively remove the United States from any liability in regard to the mismanagement of our waters diverted from our use in the Milk River Federal Reclamation Project and will effectively place it in the hands of the State which has no Trust Obligation to the people of the Blackfeet Nation who signed Treaties with the United States. The reason that the Proposed State Negotiated Water Settlement would go before Congress for ratification is because we are a Nation with which only the Federal government can enter into Treaties and that Proposed Settlement is a Treaty with the State of Montana which is prohibited by the United States Constitution, Article I,*

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Sec. 10.

*Further our Blackfeet Council is limited by our Constitution and Charter and by our Traditions and the traditional method of entering into treaties. The people's ratification is necessary before any action by the Congress or the State of Montana. To pursue the ratification of the illegal, immoral, inhumane proposed State- Tribal Negotiated Settlement is a travesty and will destroy the Blackfeet's ability to govern and ability to survive. Further, ratification of this travesty will legalize the illegal methods used against the Blackfeet and other Tribes in the pursuit of destroying our invaluable Winters Reserved rights which is necessary for the United States to disentangle itself from its Trust Responsibility to our people and which Trust the United States has violated in its theft of our water in the Milk River Federal Reclamation Project and in its lack of development of our Winters rights enunciated in 1908; for one hundred years the Blackfeet went without any type of development that would alleviate the dire poverty in which we all live while the non-Indians downstream were subsidized by the Federal government illegally using our water. Now the victim is blamed for not using our water even though our Winters Reserved rights clearly state that we do not lose our water rights from non-use. And the Trustee responsible for developing our water including hydroelectric has not bothered to recognize the Blackfeet as human beings and as a Nation to whom much is owed.*

*The United States has grown to the Super Power it is today by defrauding the Native people of their resources and land. This was done illegally and in full view of United States government and its coconspirators, the IRA Tribal Governments, the Citizens of the United States, the various States, and the United States Trustee Agents, the Bureau of Indian Affairs, the Bureau of Reclamation, the Justice Department and Department of Interior Secretary and Solicitors office putting pressure on our Councils and people, the Courts, and on the Congress. The Eloise Cobell case is only a drop in the bucket compared to what is actually owed to the true owners of this Nation.*

*We have studied the historical relationship between the Native people and the United States, primarily the Treaties, and found that the safeguards that were built in and agreed upon in the Treaties and reaffirmed in the 100th Congress have been ignored and the Native Peoples voice was either ignored or silenced. We were left out of the agreements the U.S. made that stripped us of our Nations and resources. We, the Piikani People, individually and collectively, own all the resources and assets in the Blackfeet Indian Nation, therefore nothing can be taken from us until we all have prior knowledge and give our full consent and only after our water has been developed and we realize the full economic benefits due us for the theft of our water and the lack of the Trustee's responsibility and obligation to us and payment to our people for the loss of their lands through poverty and through white encroachment. It is time the United States understands that we are fully aware of the illegal actions taking place in our Nation and the fact that they must stop immediately. The United Nations Declaration on Indigenous*

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*people and PL 100 – 606, and the Genocide Act Codified are some of the protections we are relying on in this dire situation.*

*In considering the ratification of the Proposed State Negotiated Blackfeet Water Settlement, Congress must be advised of the following that chronicles the genocide of the Blackfeet through the divestiture of our water rights and destruction of our right to exist in dignity within our own Territory and with our own laws.*

*The Proposed State-Tribal Water negotiated settlement came about through coercion and secrecy and in conjunction with the perpetrators, the potential defendants, the United States and the States. At the same time the Blackfeet's water attorney, Jeanne Whiting, is paid for negotiating away our water rights but will not be paid to litigate therefore from the onset, she pushed the Blackfeet into negotiations with the State and in over 20 years she has never prepared us for litigation; she has never developed nor attempted to develop any water projects to use our water and to benefit the Blackfeet people, nor did she pursue any litigation against the United States for the Milk River Reclamation Project, nor did she pursue any avenues that would have given us a chance to defend us in the proper forum or request hearings before Congress regarding the misapplication of the McCarran Amendment which was never intended for the Indians and which the Federal government is using to divest the Blackfeet Nation of our water rights by coercing us through threats of Court while never having been prepared by the government paid negotiation lawyer.*

*The Blackfeet hold water rights from time immemorial, hold aboriginal rights, Winters Reserved Rights (1908), and prior and paramount rights to any development of our water rights. Our Traditional beliefs involve our water spirits; water is the lifeblood of our people. Birch Creek, the middle of which is our southern Border, is a decreed stream. Swift Dam on that stream feeds Lake Francis and off Reservation towns in the area including White farmers and a Hutterite Colony all of which have extensive irrigated farming and none of whom have ever gone without water even though Conrad Investment (1908) a Winters Decision held that we are entitled to 41.76 CFS and more if we needed it which we have never used the full amount of in 100 years so the recipients of our Birch Creek have always benefited and in fact have always had first use since the Bureau of Indian Affairs which manages the Blackfeet Irrigation Project has primarily used water from the Two Medicine and the Badger Creek and little or none from Birch Creek. It does not make any sense to have the Blackfeet defer use for 25 years in the Birch Creek to benefit White constituents when they have never gone without but the Blackfeet have and no one is looking out for our interests.*

*We are located on 1 ½ million acres of our aboriginal territory. We are on the northern eastern part of the Rocky Mountains, a minuscule area compared to our larger aboriginal territory that extended west of the Rocky Mountains, east to what is now the Montana- South Dakota border, south to the Yellowstone River, and north to the*



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*Saskatchewan in northern Alberta, Canada. Our boundaries are still in question and therefore we cannot know the extent of our water rights. Yet all around have entered into compacts including the Glacier Park in which we have reserved rights and everyone else and entities are claiming our water rights over us. With your ratification of the Negotiated Settlement, we will only have water rights in the Tiber Dam into which the Marias River flows into which all our rivers and streams converge and enter. We will have to find some way to haul our water back; buckets might not be efficient.*

*From 1908 until 1976, the Indians' water rights were protected; the Whites could not divest us of our water through federal court or any other means even though everyone and every other entity was using our water through subsidized projects of the Federal government. Even with the passage of the McCarran Amendment, a rider attached to the Interior and Judiciary Appropriation Bill of 1952, the Indians' water rights were still safe, though undeveloped by the Trustee. In a 1972 Forest Service lawsuit (having nothing to do with Indians' water rights), the Justice Department and Solicitors office lawyers said that Indian Reserved rights were the same as Federal Reserved rights. The ground was laid for later Indian cases which began in 1976 wherein the same language was used to decide the case.*

*By 1978, with Carter's Water Policy, the State and Federal governments were on the move to file Indian water cases in Arizona and Montana. By 1979, all the cases were filed in federal court. The States lost and appealed to the 9<sup>th</sup> Circuit which upheld the lower courts' decisions. They appealed to the Supreme Court and the Justice and Interior supported their appeal against the Indians while purporting to represent us as Trustees. Blackfeet rights went before the Supreme Court without any lawyers because we had not entered the case and therefore had no attorney to represent us. The Chief Justice disqualified the Justice Department from representing us because of their conflict of interest as was shown by the two documents they had filed against the Indians in that case with the Supreme Court.*

*The 1983 outcome was in favor of the two States and the Court said there was no conflict of interest on the part of the Justice Department defending both sides of the clients, the federal government and the Indians even though we have opposing interests. In any case, McCarran was used by the Federal government to get the Indians into state courts where they could not overcome the politics of the arena. By saying that the Federal government owned title to our lands and therefore our water because they held them in trust, then it could waive its sovereign immunity to have our water rights tried in state court. By equating our Winters Indian Reserved rights which are private rights with Federal Reserved rights, the federal government classified us as animals and our lands as public lands. No one in the United States sees anything wrong with this. There are no laws of equity or justice when it comes to the Indians.*

*At the same time, an anti-Indian movement was impacting Congress and the States. They*



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*organized under the names of Montanans Opposing Discrimination (MOD) and the Interstate Congress for Equal Rights & Responsibilities. They still exist on Reservations and Border towns under different names and are responsible for getting introduced and lobbying anti-Indian bills in Congress and in the various states including Montana. Their stated purpose was/is to do away with the Indian Nations' inherent sovereign powers of self-government. Thus it was no accident that Montana in the early 1970's enacted and funded the Indian Jurisdiction Project which was liaisoned from the Governor's office and housed at the Missoula Indian Law School.*

*The 1977 Report from that Committee made up of Legislators recommended that first the State had to admit that the Indians had 'special' rights and then get them to sit down with the state and get them to go into "cooperative agreements" and that is how to gain jurisdiction on Reservations the Report says. By 1979, following closely on the heels of Carter's 1978 Water Policy, the legislature introduced a water bill (SB76) to have all water users file water rights with the state. Of course it could not include the Indian Nations but the Acting Director of the Inter Tribal Policy Board who was on loan from the Bureau of Indian Affairs told all the Indian Governments that they needed to get specific language into the Bill excluding them. That was not true but it got the Indian leaders into meetings with an adhoc Joint Water Committee to discuss it and where the Bureau of Indians Affairs employee from Washington, D C was asked to explain the Winters Doctrine to the Legislature and which gave him an opportunity to provide the mechanics to carry out the water bill that provided for a Water Court and for including the Indian Nations without their consent or prior knowledge and forcing them to file their water claims with the State by 1982 or go to State Court.*

*The BIA employee was James Sansevere whose job in BIA was to get all the Indian Nations in Montana to negotiate away their water rights and who was from Fort Peck where the Milk River ended. The only other Indian Leader, Caleb Shields, at the adhoc meeting who had prior knowledge was from Fort Peck which was also the first Indian Nation to enter into a Compact with the State of Montana and who gave up the Milk River. Mr. Shields said that all the members of our Nations would get to vote on any proposed settlement. The Blackfeet refused to file with the State. And the membership has maintained that the State owes us no Trust Responsibility and has no jurisdiction here and that according to our Treaties, we were supposed to be protected from white encroachment and depredations.*

*The Treaties are the Law of the Land. The Blackfeet People's voice is being silenced by the conspiracy of corruption recognized and participated in by all those who benefit from our water rights and the lack of development. We are a small voice being sent out to those who hold our fate in their hands but which are relying on the law to protect us ultimately and the greatest lawmakers of all, the Congress.*

*We ask that you not ratify the State of Montana's negotiated Settlement of Blackfeet*

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*water rights.*

*We know that Senators Baucus and Burns (sic) sponsored a Bill which was enacted to (study the rehabilitation) (sic) of the Milk River Federal Reclamation Project which Bill wiped out (illegally) our prior and paramount rights to hydroelectric development on the Sherburne Dam and other structures which store and divert our water away from the Blackfeet Reservation.*

*That has to be corrected and restored to us. We have no prior knowledge nor have we given our full consent for that Rehabilitation Bill that had only Earl Old Person's permission. Nor have we had prior knowledge that the proposed Water Compact and accoutrements were sent to Congress for ratification nor have we given our full consent. In the Process, we come first in ratifying it.*

*We respectfully request all action be stopped on Blackfeet Water Rights until we are given the proper tools with which to defend our rights and ourselves against stronger governments.*

*We respectfully request a Moratorium on McCarran application to place us in state court; thus the coercion will be removed and we will be free to find better avenues of defense that do not necessarily leave non-Indians without water or the wherewithal to have the use of it. History proves this out.*

Members of the Select Committee on Indian Affairs, we respectfully ask that you not ratify the State Water Compact; that instead you begin with just compensation for the 100 years of theft of our water that was diverted from our Reservation to downstream White water users and for the illegal components and structures on our Reservation which makes and has made possible the diversion of our water away from our lands beginning in earnest in 1909. No just compensation can be tied to the settlement of our water rights in any form or fashion. Any just compensation must be given without strings attached other than development of our water for hydroelectric purposes on every possible location on that system and on every other system now in existence and potential future systems for the full benefit of our impoverished Membership. Our people pay outrageous water bills, electric bills, garbage and otherwise because of interference from U.S. and State entities. And because our corrupt Tribal Councils are used to weaken, impoverish, and destroy our rights and our ability to govern ourselves. The Trustee United States' agents are fully aware of the immense and entrenched corruption; evidence has been brought to the authorities' attention but nothing happens because of sovereign immunity of the Tribal Councils but they cannot have sovereign immunity from the Blackfeet People.

Further, provide the People with the means to defend ourselves beginning with the payment of attorneys who can investigate what we have brought out to you here in this Testimony. Otherwise, you are laying the last stones in the Genocide of our Blackfeet and

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there is the Anti-Genocide law of 1988 on which we can rely. Treaties require the complete and prior knowledge and consensus of our people and this Compact is a Treaty in every sense of the word and by law; it is the reason why the Congress must ratify it. The States have no authority to enter into Treaties/Agreements/Compacts with the Indian Tribes and are forbidden by their Enabling Acts and by the Laws of Treaties and the United States Constitution.

Thank you for your attention to this Testimony of the Blackfeet Membership.

1. The Mueller-Wilson Report, 1999, Part Two, Dieter Doerr, Mark D. Cole, Maniz, Germany, Ron West, and the Mueller Law Offices. P.111.

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